

**§ 462.2 What regulations apply?**

The following regulations apply to this part:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations).

(2) 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Non-procurement)).

(10) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(11) 34 CFR part 97 (Protection of Human Subjects).

(12) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(13) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 462.

(Authority: 20 U.S.C. 9212)

**§ 462.3 What definitions apply?**

(a) *Definitions in the Adult Education and Family Literacy Act (Act).* The following terms used in these regulations are defined in section 203 of the Adult Education and Family Literacy Act, 20 U.S.C. 9202 (Act):

Adult education,  
Eligible provider,  
Individual of limited English proficiency,  
Individual with a disability,  
Literacy.

(b) *Other definitions.* The following definitions also apply to this part:

*Adult basic education (ABE)* means instruction designed for an adult whose educational functioning level is equivalent to a particular ABE literacy level listed in the NRS educational functioning level table in § 462.44.

*Adult education population* means individuals—

(1) Who are 16 years of age or older;

(2) Who are not enrolled or required to be enrolled in secondary school under State law; and

(3) Who—

(i) Lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;

(ii) Do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or

(iii) Are unable to speak, read, or write the English language.

*Adult secondary education (ASE)* means instruction designed for an adult whose educational functioning level is equivalent to a particular ASE literacy level listed in the NRS educational functioning level table in § 462.44.

*Content domains, content specifications, or NRS skill areas* mean, for the purpose of the NRS, reading, writing, and speaking the English language, numeracy, problem solving, English language acquisition, and other literacy skills as defined by the Secretary.

*Educational functioning levels* mean the ABE, ASE, and ESL literacy levels, as provided in § 462.44, that describe a set of skills and competencies that students demonstrate in the NRS skill areas.

*English-as-a-second language (ESL)* means instruction designed for an adult whose educational functioning level is equivalent to a particular ESL literacy level listed in the NRS educational functioning level table in § 462.44.

*Guidelines* means the *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (also known as NRS Implementation Guidelines) posted on the Internet at: <http://www.nrsweb.org>. A copy of the Guidelines is also available from

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the U.S. Department of Education, Division of Adult Education and Literacy, 400 Maryland Avenue, SW., room 11159, Potomac Center Plaza, Washington, DC 20202-7240.

*Local eligible provider* means an “eligible provider” as defined in the Act that operates an adult education program that is required to report under the NRS.

*State* means “State” and “Outlying area” as defined in the Act.

*Test* means a standardized test, assessment, or instrument that has a formal protocol on how it is to be administered. These protocols include, for example, the use of parallel, equated forms, testing conditions, time allowed for the test, standardized scoring, and the amount of instructional time a student needs before post-testing. Violation of these protocols often invalidates the test scores. Tests are not limited to traditional paper and pencil (or computer-administered) instruments for which forms are constructed prior to administration to examinees. Tests may also include adaptive tests that use computerized algorithms for selecting and administering items in real time; however, for such instruments, the size of the item pool and the method of item selection must ensure negligible overlap in items across pre- and post-testing.

*Test administrator* means an individual who is trained to administer tests the Secretary determines to be suitable under this part.

*Test publisher* means an entity, individual, organization, or agency that owns a registered copyright of a test or is licensed by the copyright holder to sell or distribute a test.

(Authority: 20 U.S.C. 9202, 9212)

#### § 462.4 What are the transition rules for using tests to measure educational gain for the National Reporting System for Adult Education (NRS)?

A State or a local eligible provider may continue to measure educational gain for the NRS using a test that was identified in the Guidelines until the Secretary announces through a notice published in the FEDERAL REGISTER a deadline by which States and local eligible providers must use only tests

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that the Secretary has reviewed and determined to be suitable for use in the NRS under this part.

(Approved by the Office of Management and Budget under control number 1830-0027)

(Authority: 20 U.S.C. 9212)

#### Subpart B—What Process Does the Secretary Use To Review the Suitability of Tests for Use in the NRS?

##### § 462.10 How does the Secretary review tests?

(a) The Secretary only reviews tests under this part that are submitted by a test publisher.

(b) A test publisher that wishes to have the suitability of its test determined by the Secretary under this part must submit an application to the Secretary, in the manner the Secretary may prescribe, by April 14, 2008, and, thereafter, by October 1 of each year.

(Authority: 20 U.S.C. 9212)

##### § 462.11 What must an application contain?

(a) *Application content and format.* In order for the Secretary to determine whether a standardized test is suitable for measuring the gains of participants in an adult education program required to report under the NRS, a test publisher must—

(1) Include with its application information listed in paragraphs (b) through (i) of this section, and, if applicable, the information listed in paragraph (j) of this section;

(2) Provide evidence that it holds a registered copyright of a test or is licensed by the copyright holder to sell or distribute a test.

(3)(i) Arrange the information in its application in the order it is presented in paragraphs (b) through (j) of this section; or

(ii) Include a table of contents in its application that identifies the location of the information required in paragraphs (b) through (j) of this section.

(4) Submit to the Secretary three copies of its application.

(b) *General information.* (1) A statement, in the technical manual for the test, of the intended purpose of the test and how the test will allow examinees